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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE:	: Chapter 11
	:
CHRYSLER, LLC, <i>et al.</i> ,	: Case No. 09-50002 (AJG)
	:
Debtors.	: (Jointly Administered)
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**OBJECTION OF BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC TO
MOTION OF DEBTORS AND DEBTORS IN POSSESSION, PURSUANT TO
SECTIONS 105, 363 AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULES 2002, 6004 AND 6006, FOR (I) AN ORDER (A) APPROVING BIDDING
PROCEDURES AND BIDDER PROTECTIONS FOR THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS ASSETS AND (B) SCHEDULING A FINAL SALE HEARING
AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; AND (II) AN
ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE
DEBTORS ASSETS, FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION
THEREWITH AND RELATED PROCEDURES AND (C) GRANTING CERTAIN
RELATED RELIEF (RELATED DOCKET NO. 190)**

Bridgestone Americas Tire Operations, LLC f/k/a Bridgestone Firestone North American
Tire, LLC ("BATO"), by and through counsel, hereby objects to the above-captioned debtors'

and debtor-in-possession' (collectively, the "Debtors") Motion Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, for (I) An Order (A) Approving Bidding Procedures and Bidder Protections for the Sale of Substantially All of the Debtors Assets and (B) Scheduling a Final Sale Hearing and Approving the Form and Manner of Notice Thereof; and (II) an Order (A) Authorizing the Sale of Substantially All of the Debtors Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (C) Granting Certain Related Relief (Docket No. 190) (the "Bid Procedures Motion"¹, with the order submitted therewith the "Bid Procedures Order" and the sale to be conducted thereunder the "Sale"), and in support hereof states as follows:

OBJECTIONS

1. BATO sells tires ("Tires") to the Debtors on credit terms, both as a Tier I supplier and by selling replacement tires through retail stores to Chrysler dealers, for which BATO is paid by the Debtors, who in turn bill the dealers.
2. The Bid Procedures Motion and the Bid Procedures Order include provisions governing the assumption and assignment of executory contracts.²
3. The Debtors have asserted that Non-Debtor Counterparties are obligated to perform regardless of whether the Debtors are making post-petition payments and have had the Court enter an order requiring Non-Debtor Counterparties to continue to perform regardless of whether the Debtors are performing post-petition. *See Order, Pursuant to Section 105 of the Bankruptcy Code, Confirming the Protections of Section 362, 365, and 525 of the Bankruptcy Code*, entered on May 1, 2009, Docket Number 213.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Motion.

² BATO reserves all rights as to whether it is a party to an assumable and assignable executory contract but assumes *arguendo* that it is for purposes of this Objection.

4. The Bid Procedures Order contemplates a sale of the Debtors' assets on the Closing Date, after which some entity other than the Debtors ("Purchaser") will be in possession of the Debtors' assets. That purchasing entity is granted up to 90 days following the Closing Date to make an ultimate determination whether to assume or reject executory contracts. *See Bid Procedures Order* at ¶ 19(c). It is unclear as to whether BATO would have any obligation to ship to the Purchaser during that 90 day period. If its contract is not ultimately accepted by the Purchaser, then the Purchaser would have no obligation to pay BATO for what it has received during the 90 day period. *See Purchase Agreement* at section 2.08. It is entirely unclear what ability if any the Debtors would have after a sale of their assets to pay for Tires shipped to them or to the Purchaser.

5. To the extent BATO is compelled to ship Tires to the Debtors or the Purchaser, it is entitled, at a minimum, to adequate protection or adequate assurance of future performance. *See In re Continental Energy Assoc Ltd.*, 178 B.R. 405, 408 (Bankr. M.D. Pa. 1995)("The only reasonable conclusion is that this court, consistent with section 105, can issue an order that would allow such debtor to enforce the contract until such time that it accepts or rejects the contract, provided that we diligently guard the interests of the non-debtor party to the contract.").

6. The sales process as set out in the Bid Procedures Order, which includes a 90 day post-Closing Date period during which a contract can be excluded from assumption, places Non-Debtor Counterparties at risk of nonpayment.

7. Paragraph 19(e) of the Bid Procedures Order appears to give the Debtors or the Purchaser the ability to "identify any additional terms or conditions of assumption and assignment." BATO objects to this language to the extent it grants the Debtors or the Purchaser any authority to change or add or modify terms or conditions of executory contracts or unexpired

leases in connection with the proposed assumption and assignment of such agreements. Executory contracts or unexpired leases must be assumed and assigned *cum onere*, with all benefits and burdens, or not at all. *See, e.g., Glass, Molders, Pottery, Plastics & Allied Workers International Union v. Anchor Resolution Corp.*, 197 F.3d 76 (3rd Cir. 1999) (holding Code §365(k) incorporates the general common law of assignments, which requires a commitment by the purchaser to perform all obligations under the contract, as well as to acquire all rights created by the contract); Restatement (Second) of Contracts §328 (1981); U.C.C. §2- 210(4)(1998). The Debtors should not be allowed to cause substantive changes to the terms of contracts by notice. There is no provision of the Bankruptcy Code granting such authority.

8. Exhibit D to the Bid Procedures Order is a proposed notice to go to Non-Debtor Counterparties regarding assumption and assignment of executory contracts. Neither this notice, nor any other papers of which BATO is aware, complies with Bankruptcy Rule 6006(f), which requires, among other things, a specification of the adequate assurance of future performance to be provided by each assignee (Bankruptcy Rule 6006(f)(4)).

THEREFORE, BATO requests that the Court deny the Bid Procedures Motion and grant it such relief as is necessary to preserve its ability to protect its rights in connection with any sale conducted under 11 U.S.C. § 363.

May 5, 2009

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been electronically filed through the Court's ECF system and served this 5th day of May, 2009, by operation of the Court's electronic filing system.

/s/ Stephen B. Selbst